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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MEIR ROSENBERG

Appeal 2009-011011
Application 10/656,973
Technology Center 3700

Before JENNIFER D. BAHR, STEVEN D.A. McCARTHY and FRED A. SILVERBERG, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-9 and 13-27. The Examiner rejects under 35 U.S.C. § 103(a) claims 1-4, 6, 7, 9, 13-15 and 17-26 as being unpatentable over Saul (US 2003/0032915 A1, publ. Feb. 13, 2003) and Ericson (US 6,533,733 B1 issued Mar. 18, 2003); and claims 5, 8, 16 and 27 as being unpatentable over Saul, Ericson and Saul '495 (US 2003/0004495 A1,

publ. Jan. 2, 1003). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Claim 1 is illustrative of the claims on appeal:

> 1. A method of regulating cerebrospinal fluid flow in a hydrocephalus patient, comprising:
>
> providing an implantable shunt system having an adjustable resistance valve for regulating the flow of cerebrospinal fluid into and out of a ventricular cavity of the patient and including a sensor element positioned in the ventricular cavity for measuring a physiological characteristic of the ventricular cavity, and a selectively operable external system controller device for communicating remotely via telemetry with the implantable shunt system, the system controller device being configured to effect an adjustment of the resistance of the valve when the device is applied to the patient;
>
> manually energizing the implantable shunt system with the system controller device;
>
> detecting a value of the physiological characteristic of the ventricular cavity measured by the sensor element;
>
> comparing the measured value with a predetermined target value for that physiological characteristic;
>
> determining a desired resistance to achieve the predetermined target value for that physiological characteristic; and
>
> adjusting a current resistance of the valve to achieve the desired resistance.

ISSUES

Claims 1 and 17 are independent. The Appellant does not argue the patentability of dependent claims 2-4, 6, 7, 9 and 13-15 separately from the patentability of claim 1. Neither does the Appellant argue the patentability of dependent claims 18-21 and 23-26 separately from the patentability of claim 17. In fact, the Appellant does not argue the patentability of independent claim 17 separately from the patentability of claim 1. (App. Br. 3-13; Reply Br. 2-5). The Appellant argues the patentability of claims 5, 8, 16 and 27 solely on the basis that Saul '495 fails to remedy deficiencies which the Appellant argues exist in the combined teachings of Saul and Ericson as applied to claim 1. (App. Br. 14).

Only issues and findings of fact contested by the Appellant have been considered. See *Ex Parte Frye*, 94 USPQ2d 1072, 1075-76 (BPAI 2010). The issues raised in this appeal are identified and addressed *seriatim* in the "Response to Argument" section at pages 7-12 of the Answer.

FINDINGS OF FACT

We adopt and incorporate by reference the findings of the Examiner at page 3, line 14 (starting at "In the specification and figures . . .") through page 4, line 8 (ending with ". . . control of the implant (see column 3, lines 5-10, 35-38, 65-67).") of the Answer. We also adopt and incorporate by reference any findings of fact which the Examiner may have made in the "Response to Argument" section at pages 7-12 of the Answer.

ANALYSIS

The Appellant makes several arguments explaining why the Appellant believes claims 1 and 22 to be patentable. The Examiner fully and persuasively addresses each of these arguments in the "Response to Argument" section at pages 7-12 of the Answer. We adopt the Examiner's reasoning. Based on this reasoning, we sustain the rejection of claims 1-4, 6, 7, 9, 13-15 and 17-26 under § 103(a) as being unpatentable over Saul and Ericson. Since the Appellant argues the rejection of claims 5, 8, 16 and 27 solely in terms of whether the teachings of Saul '495 would remedy the alleged deficiencies in the combined teachings of Saul and Ericson as applied to claim 1, we also sustain the rejection of claims 5, 8, 16 and 27 under § 103(a) as being unpatentable over Saul, Ericson and Saul '495.

DECISION

We AFFIRM the Examiner's decision rejecting claims 1-9 and 13-27.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

Klh